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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,910	06/04/2004	Daniel M. McGrath	001305	3909
29569	7590	10/18/2007		
FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080			EXAMINER ELOSHWAY, NIKI MARINA	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/709,910

Applicant(s)

MCGRATH, DANIEL M.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/4/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are considered vague and indefinite for the following reasons:

(a) Claim 3 recites the limitation "the container assembly" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

(b) Claim 4 is incomplete.

(c) Claim 6 recites the limitation "the molded interior periphery groove of the lid" in lines 3-4.

There is insufficient antecedent basis for this limitation in the claim.

(d) Claim 8 recites the limitation "retort capable packaging materials for each component" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

(e) Claim 10 recites the limitation "the spout tip with holes in the recessed depression" in line 3.

There is insufficient antecedent basis for this limitation in the claim.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1, 2, 4 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amanat et al. (U.S. 6,386,385) in view of Giraud (2004/0169045 A1). Amanat et al. teach a container for beverages (col. 2 lines 22-24), comprising a vessel 14, with an opening 16, a lid 10, a membrane seal 12, a nodule post 60 and cutting tools 80. Amanat et al. do not teach the spout of the lid. Giraud teaches that it is known to provide a beverage container with a spout (see element 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Amanat et al. with a drinking spout, as taught by Giraud, in order to dispense the contents directly into the user's mouth.

Regarding claims 2 and 13, Amanat et al. also do not teach the pull tab seal. Giraud teaches that it is known to provide a beverage container with a pull tab seal (see paragraph [0027]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with a seal covering the drinking spout, as taught by Giraud, in order to prevent the spout from becoming contaminated.

Regarding claim 4, Amanat et al. also do not teach the tapered wall of the vessel. Giraud teaches that it is known to provide a beverage container with a tapered wall(see figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with the vessel having a tapered wall, as taught by Giraud, in order to allow stacking for easy storage.

Regarding claim 11, Amanat et al. also do not teach the intake hole. Giraud teaches that it is known to provide a beverage container with an intake hole (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with an intake hole, as taught by Giraud, in order to allow easy dispensing of the product by preventing vacuum conditions from developing during use.

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5. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubach (U.S. 4,722,449) in view of Amanat et al. (U.S. 6,386,385). Dubach teaches a container comprising a vessel 5, with an opening at 51, a lid comprised of element 1 and 2, a membrane seal 6, a nodule post at lead line 23 and a cutting tool 4. Dubach does not teach that the cutting tool has a plurality of piercing heads. Amanat et al. teach that it is known to provide a cutting tool with a plurality of piercing heads (see col. 3 lines 9-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Dubach with a plurality of piercing heads, as taught by Amanat et al., in order to ensure proper opening of the membrane.

6. Claims 1, 5, 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott (U.S. 6,305,563) in view of Amanat et al. (U.S. 6,386,385). Elliott teaches a container comprising a vessel (col. 11 line 60 through col. 12 line 7), a lid 40 with a spout, a membrane seal 54, a nodule post at 95 and a cutting tool 93. The lid is convex at 87. Elliott does not teach that the cutting tool has a plurality of piercing heads. Amanat et al. teach that it is known to provide a cutting tool with a plurality of piercing heads (see col. 3 lines 9-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Elliott with a plurality of piercing heads, as taught by Amanat et al., in order to ensure proper opening of the membrane.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amanat et al. (U.S. 6,386,385) in view of Giraud (2004/0169045 A1), as applied to claim 1 above, and further in view of Leinenweber (U.S. 2003/0085232 A1). The modified container of Amanat et al. discloses the claimed invention except for the relief features. Leinenweber teaches that it is known to provide a beverage container with relief features (see figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with the relief features of Leinenweber, in order to allow the user to grip the container more securely.

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8. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amanat et al. (U.S. 6,386,385) in view of Giraud (2004/0169045 A1), as applied to claim 1 above, and further in view of Foushee et al. (U.S. 5,984,086). The modified container of Amanat et al. discloses the claimed invention except for the six pack configuration. Foushee et al. teaches that it is known to provide beverage containers in six pack configuration. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of the modified Amanat et al. containers in a six pack configuration, as taught by Foushee et al., in order to allow the user to carry a plurality of containers, and so that the containers may be packaged and sold in a conventional arrangement.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Amanat et al. (U.S. 6,386,385) in view of Giraud (2004/0169045 A1), as applied to claim 1 above, and further in view of Smalley (U.S. 4,501,371). The modified container of Amanat et al. discloses the claimed invention except for the membrane having a minimum of three layers. Smalley teaches that it is known to provide membranes with a minimum of three layers (see figure 6). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified Amanat et al. container with the membrane having a minimum of three layers, as taught by Smalley, in order to improve the sealing abilities of the membrane.

10. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Amanat et al. (U.S. 6,386,385) in view of Giraud (2004/0169045 A1) and Ferrero (U.S. 4,408,690). Amanat et al. teach a container for beverages (col. 2 lines 22-24), comprising a vessel 14, with an opening 16, a lid 10, a membrane seal 12, a nodule post 60 and cutting tools 80. Amanat et al. do not teach the spout of the lid, the pull tab seal, the tapered wall, the intake hole or the convex shape. Giraud teaches that it is known to provide a beverage container with a spout (see element 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container of Amanat et al. with a drinking spout, as taught by Giraud, in order to dispense the contents directly into the user's mouth.



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Giraud teaches that it is known to provide a beverage container with a pull tab seal (see paragraph [0027]). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with a seal covering the drinking spout, as taught by Giraud, in order to prevent the spout from becoming contaminated.

Giraud teaches that it is known to provide a beverage container with a tapered wall (see figure 4). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with the vessel having a tapered wall, as taught by Giraud, in order to allow stacking for easy storage.

Giraud teaches that it is known to provide a beverage container with an intake hole (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with an intake hole, as taught by Giraud, in order to allow easy dispensing of the product by preventing vacuum conditions from developing during use.

Ferrero teaches that it is known to provide a beverage container with a lid having a convex shape (see figure 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified container of Amanat et al. with the lid having a convex shape, as taught by Ferrero, in order to increase the capacity of the container.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art is cited for the lid structure.

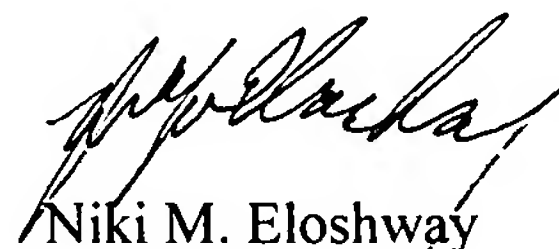
12. THIS ACTION IS NON-FINAL.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is 571-272-4538. The examiner can normally be reached Monday through Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Niki M. Eloshway  
Examiner  
Art Unit 3781

nme